

The legal system of neighbouring rights

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Abstract:

Legislative interest initially focused on authors, providing protection for their works of various kinds. As the realm of creativity knows no boundaries, several competing categories have emerged, distinguished by their innovative contributions to the delivery of these works to the public and to assisting authors in the dissemination of their creations through music, performance and preservation in physical formats that survive the death of the author or artist. This category is known as neighbouring rights holders, which are fundamentally linked to intellectual property rights. The focus on intellectual and cultural creativity is one of the essential imperatives of our time for societies striving to achieve their ambitions for inclusive development, highlighting the growing role of creators and thinkers in various cultural fields.

Keywords: Copyright, related rights, works, legal protection, moral rights, economic rights, performing artists, audiovisual producers, broadcasters.

Introduction

Initially, legislative interest focused on authors by establishing various forms of protection for their works. However, as creativity knows no boundaries, several categories have emerged that compete with authors in various fields, characterised by their creative and innovative contributions in making these works available to the public and assisting authors in their dissemination through performance and preservation in physical media, thus ensuring that the work remains protected even after the death of the author or artist. This category is referred to as neighbouring rights holders, which are fundamentally linked to intellectual property rights. The focus on intellectual and cultural creativity is one of the essential necessities imposed by modern times on societies seeking to achieve their ambitions for comprehensive development, emphasising the growing role of creators and thinkers in various cultural fields.

Copyright law grants authors financial rights related to the exploitation of their works for financial gain, as well as moral rights, which confirm the attribution of the work to its author and the right to defend it against any distortion or misrepresentation. These rights are enshrined in all national legislation on the legal protection of authorship and are enshrined internationally in the Berne Convention for the Protection of Literary and Artistic Works and reaffirmed in the TRIPS Agreement. Given that neighbouring right-holders derive their existence from authors by assisting them in the creation of their literary and artistic works, the question arises as to the extent to which neighbouring right-holders can enjoy the same rights, both moral and economic, as authors.

In answering this question, neighbouring rights differ from copyright in their three categories. The law grants them different rights from those enjoyed by authors. Producers of phonograms and broadcasting organisations, for example, are primarily engaged in industrial activities that do not involve innovation or creativity and whose main objective is investment. It is therefore natural for the legislator to grant them only economic rights while denying them moral rights. Conversely, since performing artists have an element of creativity and innovation in their work, it is reasonable for the legislator to grant them both economic and moral rights.

Chapter One: Rights Granted to Performing Artists

The rights granted to performing artists are those more closely related to the rights of authors by virtue of their creative role. The work performed by performers is not an industrial act, unlike that of producers of sound and audiovisual recordings or broadcasting organisations.

Therefore, a performing artist enjoys both moral and financial rights as a result of his or her creative efforts. For a better understanding of this study, each of these rights will be explained as follows:

Section One: Moral Rights of Performing Artists

The Algerian legislator declares in article 112 of decree 03/05: “Performing artists or musicians enjoy moral rights, including the right to have their real or pseudonymous name mentioned and their status recognised, unless the manner in which their performance is used does not allow this. They have the right to demand that the integrity of their performance be respected and to object to any alteration, distortion or degradation that could harm their reputation as artists or their honour”.

It is clear from this text that moral rights protect the personality of the artist and his or her performance.

Subsection One: Characteristics of moral rights for performing artists

The recognition of moral rights for performing artists distinguishes them even among their peers in neighbouring rights. These rights allow them, like authors, to enjoy this type of moral protection, which ensures that their personality is respected and provides them with additional security and protection. The moral rights of performers therefore have several key characteristics:

1. Perpetuity and durability of moral rights: The perpetuity of moral rights for performers means that these rights continue throughout the performer's life and even after his or her death. They are therefore permanent rights, not temporary rights. The legal recognition of the perpetuity of this right can be found in Article 112 of the Decree 03-05 on copyright and neighbouring rights, which states that "Moral rights ... are not subject to any limitation in time". If this right does not expire, the logical consequence is that it remains in force indefinitely.

2. The non-transferability of moral rights: This is because the moral rights of a performing artist are inherently personal rights that cannot be transferred or waived in any way. The Algerian legislator, through Article 112 of Law No. 03/05, has confirmed this non-transferability by stating: "Moral rights... are not transferable... and cannot be waived." It is therefore a right that cannot be alienated¹.

3. Transfer of moral rights to heirs: The principle regarding the moral rights of performers is that they do not pass to heirs². This is due to the simple fact that they are personal rights closely linked to the individual, similar to the moral rights of authors³. Therefore, in order to protect the artist's works and performances and his or her honour, certain powers of these rights may be transferred to heirs, such as the right to prevent infringement of the performance. Some legal scholars have commented on this transfer by stating that what is transferred to the heirs is not the moral right itself, but rather the powers that enable them to safeguard the moral right and thus protect the performance and the memory of their predecessor.

Section Two: The Content of Performers' Moral Right

The content of the moral right of performing artists consists of

First: The right of attribution

The right of attribution is considered to be one of the most important powers of a performing artist's moral right. It is based on the fact that it is the most essential right linked to the act of performance and representation. This right manifests itself in the recognition of the creator for what he or she performs. Therefore, we will discuss this right through the following points:

A. The right to respect for one's name

This right means that the performance should be published under the name of the performing artist. It covers all forms of performance, whether it is acting, singing, reciting, playing or dancing. In all forms of performance, it is necessary for the performance to be published with the name of the performer. If the performance is published without the artist's name, this constitutes a violation of the performing artist's moral rights. Therefore, the absence of the artist's name on the cover of a film in which the artist has participated is a violation of the artist's moral rights⁴.

This right is quite logical; a creator has the right to attribute his creation to himself, not to others, and should not be overlooked unless he chooses to do so⁵.

B. The right to use a pseudonym

A pseudonym is a different name chosen by the artist to attribute the work or performance to him or her without revealing his or her true identity to the audience. It serves as a mask to conceal their original and true name. As a result, this pseudonym becomes widely known and circulates continuously until it becomes embedded in the minds of observers and the public⁶.

C. The right to respect one's title

The Algerian legislator, in article 112 of decree 03/05, states: "The performing artist or musician has moral rights, including the right to mention his or her family name or pseudonym and his or her title". In the field of neighbouring rights, a title is the designation acquired by a person as a result of his or her diligent and continuous work in the artistic field.

Performers may acquire different titles; for example, in the musical field, an artist may start as a soloist and then become a conductor, or be both a conductor and a violinist or pianist⁷.

The right to respect one's title must therefore be upheld. If the title is not mentioned, or if the wrong title is mentioned, there is damage that requires compensation.

Second: The right to respect for performance

Respect for performance is an important and fundamental element of the moral right that performing artists should enjoy. The moral right consists of two essential

components: the right to a name and the right to respect. Therefore, we will outline the provisions relating to the right to respect for performance.

A. The concept of the right to respect

The Algerian legislator, through article 112 of the Decree 03/05 on copyright and neighbouring rights, states in its second paragraph: "... and has the right to demand respect for the integrity of his performance and to object to any modification, distortion or degradation that may harm his reputation as an artist or his dignity".

From this text, the concept of this right is that a performing artist enjoys protection against any material or legal objection that threatens the integrity of his or her performance, whether through modification, distortion or degradation that damages the artist's reputation or dignity⁸.

B. Forms of infringement

The main purpose of the right to respect is to prioritise and protect the interests of performers by:

- Giving them the right to object to publications harmful to their artistic interests.
- Preventing the public from being informed or the performance from being recorded in a way that is harmful to them.
- Enforcing the obligation to respect the moral rights of performers.

On the other hand, it aims to protect the interest of the performance or representation by:

- The right to prevent distortion of the performance.
- The right to prevent the alteration of the performance.
- The right to prevent the transfer of the performance from one medium to another⁹.

Section Two: Economic Rights of Performing Artists

The economic rights of performing artists are among the most important rights, as they provide essential financial resources or income for this group. Typically, these individuals depend primarily on their artistic work - performing or acting in its various forms - for their livelihood¹⁰.

Following the French example, the Algerian legislator has meticulously organised the provisions relating to these rights. Article 109 of Law No. 03/05 on copyright and neighbouring rights states: "The performing artist or musician has the right, under certain conditions and by means of a written contract, to license the fixation of his or her performance or music and to reproduce this fixation, as well as to broadcast it, whether in audio or audiovisual form, and to communicate it directly to the public".

Furthermore, Article 119 states: "The performing artist or musician, as well as the producer of the fixation, shall have the right to remuneration"¹¹.

On the basis of the above, we will examine the main powers related to the economic rights of performing artists.

Subsection One: The Right to Communicate to the Public

A performing artist, like an author, has the right to communicate his performance to the public. This may be done directly, as in a live performance, or indirectly, by licensing the use of a recorded performance or by authorising the rental of the original or other copies in which the performance is recorded¹².

Subsection Two: The Right to License

The right to license is a power granted by both international and national law. Article 7 of the Rome Convention emphasises that performers have the right to benefit financially from their performances, by whatever means, whether by fixation, public communication or reproduction¹³. They also have the right to prevent others from exploiting their performances without their consent and to object to any exploitation outside the limits of their agreement.

The Algerian legislator has enshrined the right to licence in Article 109 of Law No. 03/05, which states that “The performing artist or musician has the right, under specific conditions in a written contract, to license the fixation of his non-fixated performance and to reproduce this fixation, as well as to broadcast it, whether in audio or audiovisual form, and to communicate it directly to the public”.

Subsection Three: The Right to Financial Remuneration

The financial compensation for performers is realised when they license the use of their performance. Given the principle of licensing, each of the rights enjoyed by performers entitles them to a separate financial compensation. However, this does not rule out the possibility of combining these rights, resulting in a single financial compensation covering all these rights, thus facilitating relations between users and performers¹⁴.

Article 119 of Law No. 03/05 states that “The performing artist or musician and the producer of the phonogram have the right to remuneration”¹⁵.

Section Three: Rights granted to producers of sound or audiovisual recordings and broadcasting organisations

The protection of performers focuses on their performance, which includes aspects of personal creativity and financial interests, and distinguishes them from other holders of neighbouring rights. In contrast, the rights of producers of phonograms or audiovisual recordings focus solely on economic rights, while moral rights remain with the author as the true creator and innovator.

Similarly, broadcasting organisations are distinct from performing artists in terms of their rights, but are closely aligned with producers of phonograms and audiovisual recordings in terms of the exercise of their rights.

We will therefore look at these rights in detail.:

Subsection One: Rights of Producers of Sound or Audiovisual Recordings

The system of rights for producers of phonograms and videograms is unique in nature and focuses on economic rights, which include the exclusive rights of reproduction, public distribution and remuneration.

In this section, we will look at the possible existence of moral rights for producers of phonograms or audiovisual recordings, followed by an examination of the economic rights of these producers.

Section 1: Moral Rights of Producers of Sound and Audiovisual Recordings

Most legislation and international agreements, as well as legal doctrine, recognise that producers of sound and audiovisual recordings have neighbouring rights similar to those of authors. However, they unanimously agree that these producers are not entitled to personal moral rights. Some argue that this is because this category often consists of legal persons, such as companies, and moral rights are inherently personal rights belonging to natural persons. It is therefore not surprising that this group does not enjoy such rights.

On the other hand, some believe that moral or literary rights are only granted to creators, whether they are authors or performing artists. This group does not engage in creative work, but rather invests in the creative field. There is a significant difference between creativity itself and investment in the material industry, and the activities of producers do not qualify as creative work. Their nature cannot be classified as personal rights, although they may have some uniqueness in the management and assembly of creative elements, which is still subject to labour laws.

The idea of granting moral rights to the owners of sound and audiovisual recordings could potentially conflict with the rights of authors with regard to their works recorded in these media. Thus, the tangible supports produced by phonogram producers contain two types of rights, but they possess only one. The external form of the support, as a creation and fixation, constitutes a material right protected for the producer. Conversely, the content of the support, being a classified work, enjoys moral rights which are not part of the rights of the phonogram producer, as these rights belong to the author, performer or actor¹⁶.

Moreover, the moral rights of producers of phonograms and audiovisual recordings can be assessed from two short perspectives:

1. Legal Perspective: There is a near consensus on the absence of moral rights for recording producers, with no texts or agreements acknowledging such rights. This situation places them in constant conflict with authors, artists, and performers. There is no legal barrier preventing the recognition of moral rights for this category, especially since they have asserted themselves numerous times within the creative field amidst rapid technological advancements.

2. Scientific Perspective: Moral rights have strongly asserted themselves in the field of music production, becoming a hallmark associated with the recording outputs of this category. Consequently, they have significantly impacted the moral domain, particularly regarding the placement of personal names on physical supports¹⁷.

Section 2: Material Rights of Producers of Sound and Audiovisual Recordings

Before discussing the material rights of producers of sound and audiovisual recordings, it is essential to differentiate between the two. Sound recordings, referred to as "phonograms," represent the initial fixation of sounds resulting from a literary or artistic performance or traditional cultural heritage. On the other hand, audiovisual recordings involve the initial fixation of a composite image accompanied by sounds or without them. While there is a distinction between these concepts, there is, conversely, a similarity in the rights granted to the producers of these recordings¹⁸.

Key Material Rights:

1. Right to Reproduction: This right refers to the recording or initial fixation of artistic works onto multiple copies, such as tapes (cassettes, discs)¹⁹. This right allows its holder to grant or deny others the ability to reproduce, record, or distribute, always considering the rights of authors. Article 116 of Decree 03/05 states, "A producer of audiovisual recordings cannot separate their rights on the audiovisual recording from the rights acquired from the authors and performing artists of the works recorded in the audiovisual recording."

2. Legal perspective: There is a near consensus on the absence of moral rights for phonogram producers, with no texts or agreements recognising such rights. This situation puts them in constant conflict with authors, artists and performers. There is no legal obstacle to the recognition of moral rights for this category, all the more so as they have been asserted on numerous occasions in the creative field, in the midst of rapid technological progress.

3. Scientific perspective: Moral rights have strongly asserted themselves in the field of music production and have become a trademark associated with the recorded output of this category. As a result, they have had a significant impact on the moral domain, particularly with regard to the placement of personal names on physical media.

Section 2: Material Rights of Producers of Sound and Audiovisual Recordings

Before discussing the material rights of producers of phonograms and audiovisual recordings, it is important to distinguish between the two. Sound recordings, known as “phonograms”, are the first fixation of sounds resulting from a literary or artistic performance or from traditional cultural heritage. Audiovisual recordings, on the other hand, are the first fixation of a composite image, with or without sounds. While there is a difference between these concepts, there is also a similarity in the rights granted to the producers of these recordings.

Main material rights:

1. **Reproduction right:** This right relates to the fixation or initial fixation of artistic works on multiple copies, such as tapes (cassettes, discs). This right allows its holder to grant or refuse to grant to others the possibility of reproduction, fixation or distribution, while always respecting the rights of authors. Article 116 of Decree 03/05 states that “a producer of audiovisual fixations cannot separate his rights on the audiovisual fixation from the rights acquired from the authors and performers of the works on which it is based.

2. **Right to Place Copies in Circulation:** This right involves selling, renting, or using any other method to circulate copies among the public. This differs from the now-repealed order 97/10 concerning author rights, which lacked provisions for methods of circulation²⁰. Similarly, the French legislation outlines types of transfers, including sale, exchange, rental, public presentation, fixation, or recording, yet always requires written agreements as key evidence.

3. **Right to Compensation:** The right to compensation is a financial remuneration for every fixation, reproduction, or public presentation²¹. The nature of the use, whether commercial or not, does not affect this right. The Algerian legislator recognizes the right to compensation in Article 119 of Decree 03/05, which states, "The performing artist or musician and the producer of the sound recording have the right to compensation when a published sound recording is used for commercial purposes or when a copy of this sound recording is directly broadcasted or transmitted to the public by any means."

The collection of royalties resulting from the right to compensation for the benefit of the producer of sound recordings is managed by the National Office for Author Rights, as stated in the second paragraph of Article 119 of Decree 03/05²². The sixth paragraph of Article 119 stipulates that "royalties are distributed 50% to the performing artist or musician and 50% to the producer of the sound recording."²³

Section 2: Rights Granted to Broadcasting Organizations

Broadcasting organizations, whether audio or audiovisual, like performing artists and producers of sound and audiovisual recordings, also enjoy neighboring rights protected by intellectual property law. However, in terms of the specific rights they possess, they differ from performing artists in their enjoyment of rights and align more closely with producers of sound and audiovisual recordings. Together, they form a unified system within the framework of neighboring rights, as they differ from performing artists regarding the recognition of moral rights. This section will address the moral rights of broadcasting organizations in the first subsection, and then discuss their material rights in the second subsection.

Subsection 1: Moral Rights of Broadcasting Organizations

National laws, international intellectual property treaties and scholarly opinions have not recognised the moral rights of broadcasters as holders of neighbouring rights to copyright. Even the Algerian legislator, in its most recent amendment in 2003, which recognised moral rights for one category of neighbouring rights - performing artists - did not extend this recognition to broadcasting organisations, despite their practical embodiment. This lack of legal recognition of the moral rights of broadcasters can be attributed to the following reasons:

1. Moral rights, as mentioned above, are personal rights linked to the individual and primarily aimed at protecting the personality of the author²⁴.
2. They are clearly manifested in creative activities that highlight the personality of their author, whereas the work of broadcasting organisations is more industrial than creative, dominated by machinery and technology rather than original creativity²⁵.
3. The programmes broadcast often lack intellectual works or time-bound creations; they are purely technical operations without the originality and personal creativity of the author.

In addition, broadcasting organisations typically broadcast intellectual works, artistic performances or sound and audiovisual recordings. Therefore, granting them moral rights may conflict with the rights of authors, performers or producers²⁶.

Subsection 2: Material rights of broadcasting organisations

Broadcasters have substantive rights in the programmes they broadcast. They have the right to exploit their broadcasts for financial gain and can prevent others from exploiting them or grant permission by written contract²⁷. Article 118 of Decree 03/05 on Copyright and Related Rights states that “The broadcasting organisation has the right to grant licences for the rebroadcasting and fixation of its broadcasts, the reproduction of its recorded parts and the communication of its broadcasts to the public, under the

conditions set out in a written contract, while respecting the rights of the authors of the works contained in the broadcasts”²⁸.

These rights are exclusive to broadcasters and include the right to license or prevent others from exploiting these broadcasts. In particular, the Algerian legislator has not granted broadcasting organisations the right to compensation for the rebroadcasting or reproduction of their programmes, nor to the royalties due to these organisations for special copies, as has been done for other neighbouring rights holders.

There is no clear justification for this exclusion, as broadcasting organisations are a category of neighbouring right-holders and their activities are as important as those of performers and producers of phonograms and audiovisual recordings. Interference with their programmes is an infringement of all literary and artistic property.

According to article 118 of Decree 03/05, the financial rights include the right of broadcasting organisations to authorise or prohibit the rebroadcasting of their programmes²⁹, as well as the right to authorise or prohibit the recording or reproduction of these programmes, to lease or sell them and to communicate their broadcasts to the public. Each of these rights will be discussed separately.

1. Right to authorise or prohibit rebroadcasting

Broadcasting organisations are protected against any infringement of the works they broadcast, in particular when others broadcast without their permission. This is usually done by rebroadcasting those programmes, by whatever means, whether wired or by electromagnetic waves³⁰. Rebroadcasting refers to the immediate transmission of programmes from one broadcasting organisation to another or by others. Conversely, delayed rebroadcasting after the original broadcast cannot be classified as rebroadcasting; it is considered a form of communication to the public.

Section Two: Rights Granted to Broadcasting Organizations

Broadcasting organizations, whether audio or audiovisual, like performing artists and producers of audio and audiovisual recordings, are also considered to have neighboring rights protected by intellectual property law. However, in the specifics of the rights they enjoy, they differ from performing artists and are more aligned with producers of audio and audiovisual recordings in terms of enjoyment of their rights. Together, they form a unified system within the category of neighboring rights owners, differing from performing artists regarding recognition of moral rights. This section will address the moral rights of broadcasting organizations in the first part, and the material rights in the second part.

Subsection One: Moral Rights of Broadcasting Organizations

National laws and international agreements related to intellectual property, as well as scholarly opinions, have not recognized the moral rights of broadcasting organizations as holders of neighboring rights to copyright. Even the Algerian legislator, in its recent 2003 amendment that first acknowledged the moral rights of one category of neighboring rights holders—performing artists—did not extend this recognition to broadcasting organizations, despite its practical embodiment. The lack of legal acknowledgment of moral rights for broadcasting organizations may be attributed to the following reasons:

Moral rights, as mentioned above, are personality rights and focus on the protection of the author's personality. These rights are manifested in creative activities that highlight the identity of their creator, whereas the work of broadcasting organisations is characterised by industrial rather than creative aspects, dominated by machinery and technology rather than original creativity. The programmes they broadcast are usually devoid of intellectual compositions or time-specific works, representing purely technical work devoid of the originality and personal creativity of the author. Moreover, the material broadcast often consists of intellectual works, artistic performances or sound and audiovisual recordings. Granting moral rights to broadcasters therefore conflicts with the rights of these authors, performers or producers.

Subsection 2: Material rights of broadcasting organisations

Broadcasting organisations have material rights in the programmes and broadcasts they provide, which allow them to exploit their broadcasts for financial gain or to prevent others from doing so or to license them by written contract. This is in accordance with article 118 of Decree 03/05 on copyright and neighbouring rights, which states that “Broadcasting organisations have the right to authorise the rebroadcasting and fixation of their broadcasts and to reproduce what has been fixed from their broadcasts and to communicate their broadcasts to the public, under the conditions set out in a written contract, while respecting the rights of the authors of the works contained in the broadcasts”³¹.

These rights are exclusive to broadcasters and include licensing or preventing others from exploiting their broadcasts. In particular, the Algerian legislator has not granted broadcasting organisations the right to compensation for the retransmission, reproduction or exploitation of their programmes by various means, nor to the royalties due to these organisations for private copying, as is the case for other neighbouring rights holders³².

There is no clear justification for this exclusion, as broadcasting organisations are a category of neighbouring right-holders and their activities are as important as those of

performers and producers of phonograms and audiovisual recordings. An infringement of their programmes is an infringement of all literary and artistic rights.

According to article 118 of Decree 03/05, the financial right of broadcasting organisations includes the right to authorise or prohibit the rebroadcasting of their programmes, as well as the right to prohibit or authorise the recording or reproduction of these programmes and to rent or sell them. Each of these rights will be dealt with in turn.

1. Right to authorise or prohibit rebroadcasting

Broadcasting organisations are protected against any interference with the works they broadcast, in particular when others broadcast them without their authorisation. This generally includes the rebroadcasting of these programmes, regardless of the mode of transmission, whether by wire or by electromagnetic waves. Rebroadcasting refers to the immediate transmission by one broadcaster of the programmes of another broadcaster, whereas a delayed transmission after the original transmission cannot be classified as rebroadcasting, but rather as a form of communication to the public.

2. Right of Reproduction

Broadcasting organisations have the right to reproduce their programmes or to license others to do so, in accordance with Article 118 of Decree 03/05, which states that “Broadcasting organisations have the right to authorise ... and reproduce what has been fixed from their broadcasts”. Broadcasting organisations may exploit their broadcasts financially, whether by subsequent rebroadcasting or by licensing others to broadcast, sell, lend or lease these copies.

3. Right to communicate with the public

Broadcasting organisations have the right to communicate their broadcasts to the public by various available means, such as rebroadcasting these materials and radio programmes at a later time, by artificial satellites, wired means, fibre optics or electromagnetic ground waves. They also have the right to show these programmes in public places, whether for a fee or free of charge, or in cinemas, and to prevent others from doing so. This right is an exclusive right for broadcasting organisations under Article 118 of Decree 03/05, which allows them to prohibit or license others, by means of a written contract, to broadcast their television programmes to the public.

It should be noted that this right is becoming increasingly important, especially today, as broadcasters, in order to secure subscriptions from the public for their services, sell decoders for their signals containing programmes and recharge cards to receive these signals. Any infringement of this right by the display of programmes in publicly

accessible places can suppress demand for these devices and recharge cards³³, leading to significant financial losses for the broadcasters concerned.

Conclusion

Neighbouring rights to copyright remain a controversial issue, despite extensive analysis by many authors, as these rights are linked to the development of audiovisual communication means, in particular the Internet. Moreover, these rights are facing major challenges in order to achieve optimal protection. Some legislators have contributed to the development of these rights and their protection, reflecting the effective role they play in competing with authors for their rights. Thus, some have granted both material and moral rights, while others retain only their full material rights.

Footnotes

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